

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

ELEX MURPHY,)	ED103743
)	
Appellant,)	Appeal from the Circuit Court
)	of the City of St. Louis
v.)	1422-CC10210
)	
STATE OF MISSOURI,)	Honorable Thomas J. Frawley
)	
Respondent.)	Filed: March 7, 2017

Elex L. Murphy (Movant) appeals the motion court's denial of his motion for post-conviction relief under Rule 29.15 after an evidentiary hearing. He argues the motion court clearly erred in failing to find his trial counsel and his appellate counsel ineffective.

AFFIRMED.

Division Four Holds: The motion court did not clearly err in denying Movant's motion. Movant failed to establish his trial counsel was ineffective for failing to request a lesser-included instruction for second-degree assault because the record did not contain a basis in the evidence for the jury to find reckless conduct, and Movant's trial took place before the Missouri Supreme Court handed down State v. Jackson, 433 S.W.3d 390 (Mo. banc 2014). Movant also failed to establish his trial counsel was ineffective for failing to object to the prosecutor's closing argument, which was proper. Movant's appellate counsel was not ineffective for failing to raise a claim that there was insufficient evidence for second-degree murder, as it would not have been meritorious. Similarly, a claim on appeal that the trial court's refusal of an instruction for second-degree involuntary manslaughter would have been nonmeritorious. Movant would have been unable to establish prejudice because the jury was instructed on first-degree involuntary manslaughter and still convicted Movant of the greater offense of second-degree murder. Thus, Movant failed to establish his appellate counsel was ineffective.

Opinion by: Gary M. Gaertner, Jr., J.
James M. Dowd, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Maleaner Harvey
Attorneys for Respondent: Joshua D. Hawley, Shawn J Mackelprang

<p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p>
